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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

DEBORAH ZIMMERMAN,

Plaintiff,

v.

EXPERIAN INFORMATION SOLUTIONS,  
INC.,

Defendant.

Case No.: 2:18-cv-00015-APG-NJK

**ORDER**

(Docket No. 82)

Pending before the Court is Plaintiff's motion for leave to file her third amended complaint. Docket No. 82. The Court has considered Plaintiff's motion and Defendant's response. Docket Nos. 82, 90. No reply was filed. *See* Docket. The motion is properly resolved without a hearing. *See* Local Rule 78-1. For the reasons stated below, the Court hereby **GRANTS** Plaintiff's motion. Docket No. 82.

**I. Background**

Plaintiff filed for Chapter 13 Bankruptcy on November 28, 2011, and on August 24, 2012, the United States Bankruptcy Court for the District of Nevada confirmed her Chapter 13 plan. Docket No. 1 at 4-5. Plaintiff made her payments as required under the terms of the Confirmed Chapter 13 plan but alleges that Defendant either reported or caused to be reported inaccurate credit information after the bankruptcy. *Id.*

Plaintiff filed a first amended complaint, which Defendant moved to strike. Docket Nos. 24, 26. Plaintiff filed a motion for leave to file a second amended complaint adding allegations

1 about her individual claims and class claims. Docket No. 40. Defendant did not oppose the motion  
2 and Plaintiff filed her second amended complaint on May 23, 2018. Docket No. 57. The deadline  
3 to amend pleadings expired May 1, 2018, and the Court has previously declined to extend it.  
4 Docket Nos. 31, 64 at 2.

## 5 **II. Standards**

6 When a party moves to amend the pleadings after the expiration of the deadline established  
7 in the scheduling order, courts review the motion through a two-step process. First, courts treat  
8 the motion as seeking to amend the scheduling order, which is governed by the “good cause”  
9 standard outlined in Rule 16(b) of the Federal Rules of Civil Procedure. *See, e.g., Johnson v.*  
10 *Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992). “Rule 16(b)’s ‘good cause’  
11 standard primarily considers the diligence of the party seeking the amendment.” *Id.* at 609. In  
12 particular, courts look to whether the deadline set in the scheduling order “cannot reasonably be  
13 met despite the diligence of the party seeking the extension.” *Id.* Although prejudice to the  
14 opposing party may also be considered, the focus of the inquiry is on the movant’s reasons for  
15 seeking modification. *Id.* “If that party was not diligent, the inquiry should end.” *Id.* The party  
16 seeking amendment bears the burden of establishing diligence. *See, e.g., Morgal v. Maricopa*  
17 *County Bd. Of Supervisors*, 284 F.R.D. 452, 460 (D. Ariz. 2012).

18 When “good cause” has been established under Rule 16(b), courts will then examine  
19 whether amendment is proper under the standards outlined in Rule 15(a). Rule 15(a) provides that  
20 “[t]he court should freely give leave [to amend] when justice so requires,” and there is a strong  
21 public policy in favor of permitting amendment. *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir.  
22 1999). As such, the Ninth Circuit has made clear that Rule 15(a) is to be applied with “extreme  
23 liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (*per*  
24 *curiam*). Under Rule 15(a), courts consider various factors, including: (1) bad faith; (2) undue  
25 delay; (3) prejudice to the opposing party; (4) futility of the amendment; and (5) whether the  
26 plaintiff has previously amended the complaint. *See id.* at 1052. These factors do not carry equal  
27 weight, however, and prejudice is the touchstone of the analysis. *See id.* The party opposing the  
28 amendment bears the burden of showing why leave to amend should be denied. *See, e.g., Desert*

1 *Protective Council v. U.S. Dept. of the Interior*, 927 F. Supp. 2d 949, 962 (S.D. Cal. 2013) (citing  
2 *Genentech, Inc. v. Abbott Labs.*, 127 F.R.D. 529, 530-31 (N.D. Cal. 1989)).

### 3 **III. Analysis**

#### 4 **A. Rule 16**

5 Plaintiff contends that Defendant produced new documents on August 31, 2018 and  
6 October 2, 2018, which demonstrate that Defendant's policy equivocates between the definition  
7 of a consumer disclosure and a consumer report. Docket No. 82 at 7-9. Plaintiff contends that the  
8 documents contrast with Defendant's position in litigation in this District. *Id.* at 9. Plaintiff  
9 submits that the documents demonstrate that Defendant failed to disclose all the "behavioral data"  
10 it collected on Plaintiff and, therefore, that amending the complaint is appropriate to further  
11 demonstrate Defendant's liability on Plaintiff's existing claims. *Id.* at 10.

12 Plaintiff submits that the danger of prejudice to Defendant is minimal because discovery is  
13 not set to close for four months and because Plaintiff's amendment does not include any new  
14 claims, but merely "illustrates Plaintiff's existing claims." *Id.* at 12. Plaintiff further contends that  
15 any prejudice related to amendment stems from Defendant's own litigation tactics in delaying  
16 production. *Id.* Plaintiff submits that she moves for leave only weeks after receiving Defendant's  
17 FCRA policy and that the delay is attributable to Defendant's late production of the policies,  
18 despite Plaintiff's diligence in seeking this discovery. *Id.* at 12-13. Finally, Plaintiff submits that  
19 she seeks leave to amend in good faith. *Id.* at 13.

20 Defendant contends that Plaintiff fails to ask for a modification of the scheduling order or  
21 to show good cause for such modification. Docket No. 90 at 7. Defendant contends that, because  
22 Plaintiff fails to seek modification of the Court's scheduling order, her motion should be denied.  
23 *Id.* Defendant also contends that Plaintiff unduly delayed in filing her motion, as she has known  
24 for months about many of her newly alleged facts but, nonetheless, waited until the eleventh hour  
25 to add the new allegations. *Id.* at 7-8. Defendant submits that the only new claims Plaintiff seeks  
26 to add relate to the undisclosed inquiries into Plaintiff's credit, and that Plaintiff has been aware  
27 of these additional inquiries for seven months. *Id.* at 8. Defendant contends that Plaintiff has had  
28 access to the lists of all inquiries since April 2018, and that she fails to demonstrate why she did

1 not include the inquiries in her second amended complaint or why she did not move to compel the  
2 information. *Id.* at 9. Defendant submits that Plaintiff’s motion is not made in good faith, as it  
3 buries her new allegations in mischaracterizations about policies in Defendant’s recently disclosed  
4 internal documents. *Id.* at 10. Defendant contends that these policies have nothing to do with the  
5 additional inquiries on Plaintiff’s administrative report. *Id.* at 10.

6 The Court finds that Plaintiff was diligent in moving for amendment within a reasonable  
7 time after receiving the relevant documents. Therefore, the Court finds that Plaintiff has  
8 demonstrated good cause for her request under Rule 16. The Court now turns to Rule 15.

9 B. Rule 15

10 As discussed above, under Rule 15, Courts examine whether amendment is proper under  
11 the standards outlined in Rule 15(a) of the Federal Rules of Civil Procedure, which provides that  
12 “[t]he court should freely give leave [to amend] when justice so requires.” There is a strong public  
13 policy in favor of permitting amendment. *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999). As  
14 such, the Ninth Circuit has made clear that Rule 15(a) is to be applied with “extreme liberality.”  
15 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (*per curiam*). Under  
16 Rule 15(a), courts consider various factors, including: (1) bad faith; (2) undue delay; (3) prejudice  
17 to the opposing party; (4) futility of the amendment; and (5) whether the plaintiff has previously  
18 amended the complaint. *See id.* at 1052. Because of the liberal policy in favor of amendment, the  
19 party opposing the amendment bears the burden of showing why leave to amend should be denied.  
20 *See, e.g., Desert Protective Council v. U.S. Dept. of the Interior*, 927 F. Supp. 2d 949, 962 (S.D.  
21 Cal. 2013) (citing *Genentech, Inc. v. Abbott Labs.*, 127 F.R.D. 529, 530-31 (N.D. Cal. 1989)).

22 In considering all of the above factors, and in applying Rule 15(a) with extreme liberality,  
23 as it must, the Court finds that Plaintiff’s request for leave to file her third amended complaint is  
24 properly granted.

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1           **IV. Conclusion**

2           For the reasons discussed more fully above, the Court **GRANTS** Plaintiff's motion for  
3 leave to amend. Docket No. 82. Plaintiff must file her third amended complaint on the docket no  
4 later than January 8, 2019.

5           IT IS SO ORDERED.

6           Dated: January 4, 2019.

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Nancy J. Koppe  
United States Magistrate Judge